

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID L. JAMERSON #138940,

Plaintiff,

File No. 2:08-CV-284

v.

HON. ROBERT HOLMES BELL

PATRICIA L. CARUSO, et al.,

Defendants.

**ORDER APPROVING AND ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AS MODIFIED**

On August 20, 2010, United States Magistrate Judge Timothy P. Greeley issued a report and recommendation ("R&R") recommending that Defendants' motion for summary judgment (Dkt. No. 13) be granted. Defendants filed objections to the R&R on August 27, 2010.

This Court is required to make a de novo determination of those portions of the R&R to which specific objection has been made, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Defendants do not object to the recommendation that their motion for summary judgment be granted. They filed objections solely for the purpose of correcting a misstatement in the R&R regarding the basis for the recommendation. Although the

Magistrate Judge recommended that Defendants' motion be granted "based on Plaintiff's failure to exhaust his available administrative remedies," (R&R 1), this recommendation conflicts with the Magistrate Judge's finding that Plaintiff did in fact satisfy the exhaustion requirement with respect to his claims against Defendants Phillipson and Stasewich. (R&R 9.) Defendants request the Court to clarify that it is entering summary judgment on the merits of Plaintiff's claims and based on sovereign immunity and qualified immunity as recommended in the body of the R&R. (R&R 5-7, 10-13.)

Defendants' objections are well-taken. As evidenced by the balance of the R&R, the recommendation on page one that summary judgment be granted based on failure to exhaust was inadvertent and mistaken. The first page of the R&R should reflect the Magistrate Judge's recommendation that summary judgment be granted based on the merits of Plaintiff's claims and on sovereign immunity and qualified immunity. (R&R 10-13.) Accordingly,

IT IS HEREBY ORDERED that Defendants' objections to the R&R (Dkt. No. 2:08-CV-284) are **SUSTAINED**.

IT IS FURTHER ORDERED the August 20, 2010, R&R of the Magistrate Judge (Dkt. No. 20) is **APPROVED** and **ADOPTED** as the opinion of the Court, with the exception that page one of the R&R is **MODIFIED** to reflect that Defendants' motion for summary judgment is granted based on the merits of Plaintiff's claims and on sovereign immunity and qualified immunity.

IT IS FURTHER ORDERED that Defendants' motion for summary judgment (Dkt. No. 13) is **GRANTED**.

IT IS CERTIFIED pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3) that an appeal of this action would not be in good faith.

Dated: September 15, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE